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FILED
MAR. 8
CHARLES ELMORE

Supreme Court of the United States.

OCTOBER TERM, 1931.

No. 722.

UTAH POWER & LIGHT COMPANY, A CORPORATION,
Appellant,

v.

EMMITT PFOST, COMMISSIONER OF LAW ENFORCEMENT OF THE STATE OF IDAHO, AND FRED J. BABCOCK, ATTORNEY GENERAL OF THE STATE OF IDAHO,
Respondents.

NOTICE OF MOTION AND MOTION OF APPELLANT TO HAVE CASE ADVANCED AND HEARD WITH OTHER CASES INVOLVING THE SAME QUESTION.

JOHN F. MacLANE,
Solicitor for Appellant.

SIMPSON THACHER & BARTLETT,
120 Broadway,
New York, N. Y.
Counsel.

Supreme Court of the United States.

OCTOBER TERM, 1931.

No. 722.

UTAH POWER & LIGHT COMPANY, a corporation,
Appellant,

AGAINST

EMMITT PFOST, Commissioner of Law Enforcement of the State of Idaho, and FRED J. BABCOCK, Attorney General of the State of Idaho,
Respondents.

NOTICE OF MOTION OF APPELLANT TO HAVE CASE ADVANCED AND HEARD WITH OTHER CASES INVOLVING THE SAME QUESTION.

TO FRED J. BABCOCK, ESQ., ATTORNEY GENERAL OF THE STATE OF IDAHO, SIDMAN I. BARBER, ESQ., ASSISTANT ATTORNEY GENERAL AND MAURICE H. GREENE, ASSISTANT ATTORNEY GENERAL, SOLICITORS FOR RESPONDENTS:

PLEASE TAKE NOTICE that on the 14th day of March, 1932, or as soon thereafter as counsel can be heard, the within motion of appellant to have this case advanced and heard with other cases involving the same question will be submitted to the Supreme Court of the United States.

A printed copy of the motion is served upon you herewith.

JOHN F. MACLANE
Solicitor for Appellant.

SIMPSON THACHER & BARTLETT,
120 Broadway,
New York, N. Y.,
Counsel.

Due and timely service of this notice and the accompanying motion accepted this 2d day of March, 1932, and we hereby consent that the motion be granted if agreeable to the Court.

FRED J. BABCOCK
SIDMAN I. BARBER
MAURICE H. GREENE
Solicitors for Respondents.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

No. 722.

UTAH POWER & LIGHT COMPANY, a corporation,
Appellant,
AGAINST
EMMITT PFOST, Commissioner of Law Enforcement of the State of Idaho, and FRED J. BABCOCK, Attorney General of the State of Idaho,
Respondents.

MOTION OF APPELLANT TO HAVE CASE ADVANCED AND HEARD WITH OTHER CASES INVOLVING THE SAME QUESTION.

Comes now the appellant in the above entitled cause, and moves that this case be advanced and heard with other cases involving the same question, and in support of its motion, makes the following brief statement of the matter involved, and the reasons relied upon:

This is an appeal from a final decree of a special statutory court constituted under Section 380, Title 28, U. S. C. A. (Section 266 of the Judicial Code, as amended) dissolving an interlocutory injunction theretofore issued by said court, and denying a permanent injunction restraining the respondents from enforcing a certain Act passed by the 1931

Extraordinary Session of the Legislature of the State of Idaho. This Act provides for the payment of a tax of one-half mill per kilowatt hour upon the generation, manufacture or production of electricity and electrical energy in the State of Idaho.

From the decision of the special statutory court dissolving an interlocutory injunction, and denying a permanent injunction, entered on February 15, 1932 a direct appeal was forthwith taken to this Court under the provisions of Sections 345 and 380, Title 28, U. S. C. A. (Judicial Code, Sections 238 and 266, as amended). The certified transcript of record was filed, and the case docketed in this Court as No. 722, October Term 1931, on February 23, 1932. The record is now in the process of printing. A Statement as to Jurisdiction on Appeal was filed in this Court on February 26, 1932. Counsel for respondents filed with the Clerk an admission of service of the Statement, as of February 24, 1932, advising the Court that the respondents do not propose to file any Counter Statement and consenting that the appellant's Statement might be forthwith presented to the Court for action.

One of the principal questions involved in this case is whether or not a state statute imposing a tax upon the generation, manufacture or production of electricity and electrical energy, accomplished in connection with, and, it is claimed, as an integral and inseparable part of its transmission to and use in another state, is invalid as a direct burden upon interstate commerce. The appellant in this case generates electrical energy in Idaho in connection with its transmission to and use in Utah.

Three cases involving the same question applied to interstate generation and transmission to or from South Carolina, are now awaiting hearing before this Court. These cases are *South Carolina Power Company* v. *South Carolina Tax Commission*, No. 542, October Term, 1931; *Broad River Power Company* v. *Same*, No. 566, October Term, 1931; *Lexington Water Power Company* v. *Same*, No. 567, October

Term, 1931. These are three independent suits in equity brought against the South Carolina Tax Commission to enjoin the enforcement of a South Carolina statute likewise taxing the generation of electric power. One of the principal contentions made by the plaintiffs in these cases is that the tax levied by the statute (which is substantially the same in this respect as the Idaho statute involved in this case) imposes a direct burden upon interstate commerce as to electric energy entering into such commerce. They were heard together before a statutory court convened under Section 380, Title 28, U. S. C. A. (Section 266, Judicial Code, as amended) on applications for interlocutory injunctions which were denied. The decision of the statutory court is reported in 52 F. (2d) 515.

It is apparent, therefore, that the same question of law is involved in these three South Carolina cases as is involved here. The South Carolina cases were heard on affidavits on applications for interlocutory injunctions, whereas, in this Idaho case, an interlocutory injunction was granted and the cause proceeded to final hearing before the three judges; evidence was introduced by both parties covering fully both the scientific and practical aspects of the questions involved, and the case was decided on the merits after final hearing. In this case, therefore, the facts are more fully developed, and the record more complete, than in the three South Carolina cases. It will be helpful to the Court in deciding the question of law involved in this case and in the three South Carolina cases, to have before it the record in this case in which the facts are fully established by the evidence adduced on the final hearing.

WHEREFORE, the appellant, upon the ground that this case involves the same question as the three cases—*South Carolina Power Company* v. *South Carolina Tax Commission*, No. 542, October Term, 1931; *Broad River Power Company* v. *Same*, No. 566, October Term, 1931; *Lexington Water Power Company* v. *Same*, No. 567, October Term, 1931—moves this

Court, pursuant to Rule 20, Subdivision 8, that this case (No. 722) be advanced in order to be heard together with the said cases, and that they be argued as one case, or on such terms as may be prescribed.

Respectfully submitted,

JOHN F. MACLANE
Solicitor for Appellant.

SIMPSON THACHER & BARTLETT,
120 Broadway,
New York, N. Y.,
Counsel.